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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA  
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8 FRANK M. PECK,  
9 Plaintiff,  
10 v.

No. 2:19-cv-01023-SAB

11 UNITED STATES OF AMERICA;  
12 JENNIFER A. DORSEY; DAVID S.  
13 DOTY; GREGORY M. SLEET; RENE L.  
14 VALLARDES; COURTNEY B.  
15 KIRSCHNER; AND JOHN DOES  
16 Defendants.  
17

**ORDER DISMISSING ACTION  
PURSUANT TO 28 U.S.C.  
§ 1915A**

18 Before the Court is Plaintiff's First Amended Civil Rights Complaint  
19 Pursuant to § 1983 and/or Bivens Action and Motion for Injunctive Relief and  
20 Restraining Order to Prevent Irreparable Harm to *Peck v. Williams*, Case No. 2:17-  
21 cv-01620-JAD-VCE per 28 U.S.C. § 2254, ECF No. 37. Plaintiff is representing  
22 himself *pro se*. Defendants have not made an appearance. This is the second time  
23 the Court has screened a complaint from Plaintiff in this matter. As with the first  
24 complaint, this matter is—essentially—an attack on Plaintiff's habeas petition  
25 pending before Judge Dorsey. Having considered Plaintiff's motions, the record in  
26 this case, and applicable law, the Court dismisses Plaintiff's motions *sua sponte*  
27 pursuant to its screening authority under 28 U.S.C. § 1915A.

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**ORDER DISMISSING CASE PURSUANT TO 28 U.S.C. § 1915A \* 1**

1 **Facts**

2 Plaintiff filed an amended *pro se* § 1983 complaint on August 29, 2019,  
3 seeking a temporary restraining order and a preliminary injunction against Judge  
4 Dorsey, Courtney Kirshner, and various anonymous John and Jane Doe attorneys.  
5 ECF No. 14. All of Plaintiff's claims against the Defendants arise from their  
6 involvement in Plaintiff's pending habeas petition before Judge Dorsey, *Peck v.*  
7 *Williams*, Case No. 17-cv-01620-JAD-VCF. The Court dismissed Plaintiff's First  
8 Amended Complaint, ECF No. 14, pursuant to 28 U.S.C. § 1915A for failure to  
9 state a valid claim and granted him leave to amend. ECF No. 32.

10 In this amended complaint, Plaintiff brings claims against Judge Jennifer  
11 Dorsey from the District of Nevada, Judge David S. Doty of the District of  
12 Minnesota, retired Judge Gregory M. Sleet of the District of Delaware, Rene L.  
13 Vallardes and Courtney B. Kirschner of the Federal Public Defenders of Nevada,  
14 John Does from state and federal crime labs and the FBI. Plaintiff argues that his  
15 claims are "designed for the specific end to regain control of [Plaintiff's] case  
16 illegally seized by the government to continue the silencing of [Plaintiff's] never  
17 before litigated claims exposing government fraud in the application of forensic  
18 DNA" in his underlying criminal conviction and habeas petition. ECF No. 37 at 4.  
19 In particular, Plaintiff argues that the various Defendants have engaged in a  
20 conspiracy to defraud Plaintiff and violate his First Amendment rights to petition  
21 the government for redress of grievances, his Fourteenth Amendment rights to due  
22 process and equal protection, and his Fourth Amendment right to be free of  
23 unreasonable searches and seizures. *Id.* at 5. Plaintiff further argues that Judge  
24 Dorsey, Ms. Kirschner, and Mr. Vallardes colluded with the investigators and  
25 crime lab involved in his 2009 state-court prosecution in a "sympiotic venture" to  
26 keep Plaintiff from exposing the falsity of the evidence on which he was convicted  
27 in his habeas petition. *Id.* Plaintiff requests injunctive relief removing his court-

1 appointed counsel and reinstating his status as pro se immediate screening of his  
2 habeas petition, as well as a refund of his filing fee. *Id.* at 16.

### 3 **28 U.S.C. § 1915A**

4 The Prison Litigation Reform Act provides that a district court must review  
5 a complaint in a civil action in which a prisoner seeks redress from a governmental  
6 entity, officer, or employee before or soon after docketing. 28 U.S.C. § 1915A(a).  
7 “A court may screen a complaint pursuant to § 1915A only if, at the time the  
8 complaint is filed, the plaintiff is incarcerated or detained in any facility because he  
9 is accused of, convicted of, sentenced for, or adjudicated delinquent for violations  
10 of criminal law or the terms and conditions of parole, probation, pretrial release, or  
11 diversionary programs.” *Olivas v. Nevada ex rel. Dep’t of Corr.*, 856 F.3d 1281,  
12 1284 (9th Cir. 2017) (per curiam) (quotation marks omitted).

13 Upon review, the court shall identify cognizable claims or *sua sponte*  
14 dismiss the complaint (or any portion of the complaint) if the complaint is (1)  
15 frivolous, malicious, or fails to state a claim upon which relief can be granted or  
16 (2) seeks monetary relief from a defendant who is immune from such relief. 28  
17 U.S.C. § 1915A(b). A complaint is frivolous if it is not grounded in either law or  
18 fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *superseded in part by statute*  
19 *as stated in Lopez v. Smith*, 203 F.3d 1122 (2000). A complaint is malicious if it  
20 was filed with the intention or desire to harm another. *Washington v. Los Angeles*  
21 *Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1055 (9th Cir. 2016).

22 A complaint fails to state a claim if it does not meet the standards of Federal  
23 Rule of Civil Procedure 12(b)(6); that is, the complaint must “contain sufficient  
24 factual matter, accepted as true, to state a claim to relief that is plausible on its  
25 face” to survive § 1915A. *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014).  
26 The facts alleged in a complaint are to be taken as true and must “plausibly give  
27 rise to an entitlement for relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). Mere  
28 legal conclusions “are not entitled to the assumption of truth.” *Id.* The complaint

1 must contain more than a “formulaic recitation of the elements of a cause of  
2 action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must plead  
3 “enough facts to state a claim that is plausible on its face.” *Id.* at 570.

4 *Pro se* complaints are construed “liberally” and should generally be  
5 dismissed without prejudice unless it is absolutely clear that deficiencies in the  
6 complaint cannot be cured by amendment. *Nordstrom*, 762 F.3d at 908 (*citing*  
7 *Silva v. Di Vittorio*, 658 F.3d 1090, 1101 (9th Cir. 2011)). However, even a liberal  
8 interpretation of a civil rights complaint may not supply essential elements of a  
9 claim that the plaintiff failed to plead. *Ivey v. Bd. of Regents*, 673 F.2d 266, 268  
10 (9th Cir. 1982). In addition, in order to find liability under either a § 1983 or  
11 *Bivens* theory of liability, the plaintiff must set forth facts demonstrating how each  
12 Defendant caused or personally participated in causing a deprivation of the  
13 plaintiff’s protected rights. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

14 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
15 brings three or more civil actions or appeals which are dismissed as frivolous or for  
16 failure to state a claim will be precluded from bringing any other civil action or  
17 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious  
18 physical injury.” 28 U.S.C. § 1915(g). If the court determines that any of the §  
19 1915A(b) grounds are satisfied, it must dismiss the case and enter a “strike”  
20 against the plaintiff prisoner. *Byrd v. Phoenix Police Dep’t*, 885 F.3d 639, 641 (9th  
21 Cir. 2018).

### 22 **Legal Standard**

23 Plaintiff’s claims against Defendants are presented as § 1983 claims and  
24 *Bivens* claims. Although Plaintiff does not say which standard applies to which  
25 claims, the Court will consider both theories. The standards for each of these  
26 claims are detailed below.

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1       1. § 1983 Claims

2           42 U.S.C. § 1983 provides a cause of action against a person acting under  
3 color of state law for violations of rights guaranteed by the federal Constitution or  
4 federal law. *Pistor v. Garcia*, 791 F.3d 1104, 1114 (9th Cir. 2015). In general,  
5 federal employees acting pursuant to federal law are not acting “under color of  
6 state law” and are not proper defendants in a § 1983 action. *Billings v. United*  
7 *States*, 57 F.3d 797, 801 (9th Cir. 1995). Thus, to state a § 1983 claim against a  
8 federal officer, the plaintiff must show that the person acted under color of state  
9 law. A person acts under color of state law where she has “exercised power  
10 possessed by virtue of state law and made possible only because the wrongdoer is  
11 clothed with the authority of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988)  
12 (internal quotations omitted). Federal officials and employees are “persons” for  
13 purposes of § 1983 if they conspired with or worked in concert with state officials  
14 under color of state law to deprive a person of her federal rights. *Cabrera v.*  
15 *Martin*, 973 F.2d 735, 741 (9th Cir. 1992). To show a conspiracy between state and  
16 federal parties under § 1983, the plaintiff must show an agreement or meeting of  
17 the minds to violate the plaintiff’s constitutional rights, but he need not show that  
18 each participant knew the exact details of the plan. *United Steelworkers of Am. v.*  
19 *Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989) (en banc). However,  
20 conclusory allegations are insufficient to state a claim of conspiracy. *Simmons v.*  
21 *Sacramento Cnty. Sup. Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003).

22       2. Bivens Claims

23           No federal statute authorizes federal courts to hear suits against federal  
24 officers who violate the Constitution. However, the Supreme Court has long held  
25 that federal officers may be sued for injunctive relief to prevent future  
26 infringements of federal law. *See, e.g., Larson v. Domestic & Foreign Commerce*  
27 *Corp.*, 337 U.S. 682 (1949). In addition, the Supreme Court has inferred a narrow  
28 cause of action against federal officers for damages directly from the text of the

Constitution. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (Fourth Amendment violation related to warrantless search and seizure); *Carlson v. Green*, 446 U.S. 14 (1980) (Eighth Amendment violation related to a prison officials' denial of medical care); *Davis v. Passman*, 442 U.S. 228 (1979) (Fifth Amendment due process clause violation based on discrimination on the basis of sex in federal employment). Courts generally apply the same standards in both § 1983 claims and *Bivens* claims. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 809 (1982).

However, it is not enough that the plaintiff allege he suffered a violation of the same general right as one of the three recognized grounds for a *Bivens* claim. The Supreme Court has recently held that, it will not expand the *Bivens* cause of action to contexts that are “different in a meaningful way from previous *Bivens* cases” decided by the Court. *Hernandez v. Mesa*, 589 U.S. ---, ---, No. 17-1678, 2020 WL 889193 at \*5 (2020) (quoting *Ziglar v. Abbasi*, 582 U.S. ---, 137 S. Ct. 1843, 1859-60 (2017)). Therefore, in order to have a cognizable *Bivens* claim, a plaintiff must allege that their claim is both factually and legally similar to *Bivens* claims previously decided by the Supreme Court. *Id.* at \*6-\*7. If either of these elements are dissimilar, the Court will not find that the plaintiff has stated a cognizable *Bivens* claim.

## Discussion

First, the Court has jurisdiction to screen Plaintiff's complaint and motions pursuant to § 1915A. Plaintiff is currently incarcerated at the High Desert State Prison in Indian Springs, Nevada. He falls into the Prison Litigation Reform Act's definition of a "prisoner."

As discussed above, Plaintiff claims that Judge Dorsey, Ms. Kirschner, and Mr. Vallardes colluded with the investigators and crime lab involved in his 2009 state-court prosecution in a “symbiotic venture” to keep him from exposing the falsity of the evidence on which he is convicted. In particular, Plaintiff alleges that,



1 because Judge Dorsey, Ms. Kirschner, and Mr. Vallardes all received training from  
2 law enforcement about polymerase chain reaction (PCR) DNA analysis,<sup>1</sup> they  
3 were in a symbiotic venture with state actors. In addition, Plaintiff claims that  
4 Judges Doty and Sleet committed fraud in issuing orders (wholly unrelated to this  
5 case) that discussed PCR DNA analysis in criminal cases.

6 1. Plaintiff's *Bivens* Claims

7 As a preliminary matter, Plaintiff frames his complaint as pursuant to § 1983  
8 “and/or” *Bivens*. However, Plaintiff's claims necessarily fail if they are framed as  
9 *Bivens* claims for two reasons. First, as to the state crime lab defendants, Plaintiff's  
10 claims fail because state actors are not cognizable parties for purposes of a *Bivens*  
11 action. *Bivens*, 403 U.S. at 394 (concluding that the *Bivens* remedy is unique to  
12 federal officers).

13 Second, Plaintiff's claims as to the federal defendants—Judge Dorsey, Judge  
14 Doty, Judge Sleet, Ms. Kirschner, and Mr. Vallardes—fail because they would  
15 involve the extension of *Bivens* into a new context. *See Abbasi*, 137 S. Ct. at 1859-  
16 60. Plaintiff's claims sound in the First, Fourth, and Fourteenth Amendments. The  
17 Supreme Court has never recognized a *Bivens* claim based on a federal officer's  
18 violation of the First and Fourteenth Amendments. Insofar as the Court has  
19 recognized a *Bivens* claim for violations of the Fourth Amendment, Plaintiff's case  
20 is factually dissimilar from *Bivens* and therefore constitutes a new context. *See id.*  
21 at 1860 (“A case may differ in a meaningful way because of...the constitutional  
22 right at issue [or] the generality or specificity of the official action...”).

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23 <sup>1</sup> Polymerase chain reaction is a common technique to “amplify” a specific section  
24 of DNA by making copies of a sample in a test tube. PCR is often used in forensic  
25 analysis to create a DNA “fingerprint” based on a small sample. PCR is a widely  
26 accepted method in molecular biology and criminal forensic analysis. *See*  
27 *Polymerase Chain Reaction (PCR) Fact Sheet*, National Human Genome Research  
28 Institute, National Institute of Health (June 16, 2015),  
<https://www.genome.gov/about-genomics/fact-sheets/Polymerase-Chain-Reaction-Fact-Sheet>.

1 Accordingly, Plaintiff fails to state a cognizable *Bivens* claim against the federal  
2 defendants.

3 Third, insofar as Plaintiff alleges *Bivens* claims against the United States  
4 directly, these claims must also fail because the United States may not be sued  
5 unless federal legislation specifically and explicitly authorizes the suit. *See Cohens*  
6 *v. Virginia*, 19 U.S. (6 Wheat.) 264, 411-412 (1821).

7 The Court now turns to Plaintiff's § 1983 claims against each Defendant.  
8 For the reasons discussed below, the Court concludes that Plaintiff's claims should  
9 be dismissed *sua sponte* because his complaints fail to state claims for which relief  
10 can be granted.

## 11 2. § 1983 Claims Against the United States

12 The Court briefly disposes of these claims. As with the *Bivens* claims against  
13 the United States, these claims fail because the United States may not be sued  
14 unless Congress explicitly authorizes the suit. *Cohens*, 19 U.S. at 411-412.  
15 Furthermore, the federal government cannot be the subject of a § 1983 action  
16 because it is not a "person" for purposes of § 1983. *See District of Columbia v.*  
17 *Carter*, 409 U.S. 418, 424-25 (1973). Thus, insofar as Plaintiff alleges any § 1983  
18 claims against the United States, he fails to state a claim under § 1915A(b)(1). The  
19 Court accordingly dismisses these claims.

## 20 3. § 1983 Claims Against Judge Dorsey

21 Plaintiff alleges that Judge Dorsey conspired with state investigators and  
22 crime lab regarding PCR DNA analysis in order to deprive him of his right to  
23 present his claims in his habeas proceeding. ECF No. 37 at 2. In addition, Plaintiff  
24 alleges that Judge Dorsey acted under color of state law and conspired with state  
25 actors by appointing him federal public defenders in his habeas proceeding. *Id.* at  
26 5. Plaintiff characterizes his counsel, Ms. Kirschner and Mr. Vallardes, as state  
27 agents because they are admitted to the State Bar of Nevada. Plaintiff argues that,  
28



1 by appointing counsel, Judge Dorsey intended to conceal Plaintiff's arguments  
2 about PCR DNA evidence he was going to introduce in his habeas proceeding.

3 Plaintiff's allegations against Judge Dorsey fail to state a claim for which  
4 relief can be granted. As a federal judge, Judge Dorsey is protected from suit by  
5 the doctrine of judicial immunity. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)  
6 (immunity from actions for damages). Furthermore, § 1983 provides judges with  
7 immunity from suits for injunctive relief arising from a judge's exercise of her  
8 judicial capacity, unless she violated a declaratory decree or declaratory relief was  
9 unavailable. Federal Courts Improvement Act of 1996, Pub. L. 104-317, (b)-(c),  
10 110 Stat. 3847 (1996) (superseding *Pulliam v. Allen*, 466 U.S. 522 (1984)); *Moore*  
11 *v. Urquhart*, 899 F.3d 1094 (9th Cir. 2018).

12 Judge Dorsey's order directing appointment of counsel in Plaintiff's habeas  
13 case is undoubtedly a judicial act, was not in violation of a declaratory judgment,  
14 and there is no evidence Plaintiff was prohibited from seeking declaratory relief.  
15 Even if Judge Dorsey's order directing appointment of counsel was wrongly  
16 decided, Plaintiff has no grounds for the relief he seeks. *Stump*, 435 U.S. at 356-57  
17 ("A judge will not be deprived of immunity because the action [she] took was in  
18 error, was done maliciously, or was in excess of his authority[.]"). Insofar as  
19 Plaintiff argues that Judge Dorsey acted in the absence of all jurisdiction,  
20 Plaintiff's argument fails to state a claim for relief because he only makes  
21 conclusory allegations that the court there lacked jurisdiction. *See Iqbal*, 556 U.S.  
22 at 664. Accordingly, Judge Dorsey is absolutely immune from liability for this act.  
23 Because Judge Dorsey is immune from suit, Plaintiff fails to state a claim under  
24 § 1915A(b)(1).

25 Plaintiff also fails to state a claim against Judge Dorsey insofar as he alleges  
26 that she conspired with state investigators and the state crime lab in a "sympiotic  
27 venture." Plaintiff alleges that Judge Dorsey is engaged in a conspiracy to protect  
28 the state investigators and crime lab that were involved in Plaintiff's underlying

1 criminal conviction. ECF No. 37 at 6. In addition, Plaintiff alleges—without any  
2 factual support—that Judge Dorsey received training from state crime lab officials  
3 about a state and federal DNA database. These conclusory allegations are  
4 insufficient to show that Judge Dorsey and the state crime lab officials and  
5 investigators were engaged in a plan to violate Plaintiff’s rights. Because  
6 Plaintiff’s allegations consist of only conclusory statements, *see Iqbal*, 556 U.S. at  
7 664, Plaintiff fails to state a claim under § 1915A(b)(1).

8 Accordingly, the claims against Judge Dorsey are dismissed.

9 4. § 1983 Claims Against Ms. Kirschner and Mr. Vallardes

10 Plaintiff brings similar claims against his court-appointed attorneys Ms.  
11 Kirschner and Mr. Vallardes. Plaintiff alleges that Mr. Vallardes and Ms.  
12 Kirschner are state actors by virtue of their membership in the Nevada bar  
13 association. ECF No. 37 at 12. Plaintiff alleges that Mr. Vallardes and Ms.  
14 Kirschner violated his right to litigate without active interference by appearing  
15 without his authorization in his habeas case. *Id.* at 11. In addition, Plaintiff alleges  
16 that Mr. Vallardes and Ms. Kirschner received training from state investigators and  
17 crime lab employees about PCR DNA analysis, thus making them state actors. *Id.*

18 Plaintiff’s claims that Ms. Kirschner and Mr. Vallardes violated his right to  
19 litigate without active interference in his habeas case and that they conspired with  
20 state officials to prevent him from presenting his habeas case must fail. Plaintiff’s  
21 claims fail to establish that Ms. Kirschner and Mr. Vallardes are persons for  
22 purposes of a § 1983 action. First, contrary to Plaintiff’s assertions, Ms. Kirschner  
23 and Mr. Vallardes are not state actors by virtue of their employment as public  
24 defenders. *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992) (finding that public  
25 defenders are not acting under color of state law for § 1983 purposes when acting  
26 as advocates); *Polk Cnty. v. Dodson*, 454 U.S. 312, 320-25 (1981). Courts have  
27 similarly found that federal public defenders—like Ms. Kirschner and Mr.  
28 Vallardes—do not act under color of federal law. *Cox v. Hellerstein*, 685 F.2d

1 1098, 1099 (9th Cir. 1982) (citing *Polk Cnty.*, 454 U.S. 312 at 320-25).  
2 Furthermore, although the State Bar of Nevada is a public corporation, *see Nev.*  
3 *Sup. Ct. R. 76*, that does not necessarily mean that all actions by the Bar or its  
4 members qualifies as state action for purposes of § 1983. *Cf. San Francisco Arts &*  
5 *Athletics, Inc. v. U.S. Olympic Committee*, 483 U.S. 522, 546-47 (1987) (finding  
6 that the government cannot be held liable for the independent decisions of public  
7 corporations); *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974) (finding that the  
8 government cannot be held liable under § 1983 for the actions of private  
9 corporations providing public utilities, even where the corporation is heavily  
10 regulated by the government).

11 Second, Plaintiff fails to show that Ms. Kirschner and Mr. Vallardes were  
12 engaged in a conspiracy with state officials to deprive him of his right to present  
13 evidence on PCR DNA analysis in his habeas case. As with his claims against  
14 Judge Dorsey, Plaintiff alleges—without any factual support—that a conspiracy  
15 existed because Ms. Kirschner and Mr. Vallardes received training about state and  
16 federal crime labs from state employees. This is not sufficient to state a claim of  
17 conspiracy under § 1983. *See Iqbal*, 556 U.S. at 664

18 Accordingly, the Court dismisses the claims against Ms. Kirschner and Mr.  
19 Vallardes.

#### 20 5. § 1983 Claims Against Judge Doty and Judge Sleet

21 Plaintiff alleges that Judge David S. Doty, a district court judge from the  
22 District of Minnesota, and Judge Gregory M. Sleet, a retired district court judge  
23 from the District of Delaware, are part of a conspiracy to conceal material facts  
24 about PCR DNA analysis. ECF No. 37 at 6. In particular, Plaintiff cites one case  
25 authored by each judge that allegedly make certain claims about the use of PCR  
26 DNA analysis. *Id.*

27 First, as with the claims against Judge Dorsey, Judges Doty and Sleet are  
28 protected by absolute judicial immunity. Issuing orders in criminal cases regarding

1 the admissibility of evidence is undoubtedly a judicial act, and there is no evidence  
2 that either judge acted completely outside their jurisdiction in issuing such orders.  
3 *See Stump*, 435 U.S. at 356-57 (“A judge will not be deprived of immunity because  
4 the action [she] took was in error, was done maliciously, or was in excess of his  
5 authority[.]”). In addition, Plaintiff’s conclusory allegations that Judge Doty and  
6 Judge Sleet are engaged in a conspiracy to conceal evidence about PCR DNA  
7 analysis is wholly unsupported. *See Iqbal*, 556 U.S. at 664

8 Accordingly, Plaintiff fails to state a claim for purposes of § 1915A(b)(1)  
9 and the Court dismisses those claims.

#### 10 6. § 1983 Claims Against John Does

11 Finally, Plaintiff alleges claims against a litany of John Doe defendants,  
12 including administrators of state and federal crime labs and the Director of the FBI.  
13 ECF No. 37 at 3. Plaintiff does not include any factual support for his allegations  
14 that these defendants were engaged in conduct that amounts to a conspiracy with  
15 any of the other defendants. Conclusory allegations are insufficient to state a claim  
16 for conspiracy. *See Iqbal*, 556 U.S. at 664.

17 Accordingly, the Court finds that Plaintiff fails to state a claim against the  
18 Doe defendants under § 1915A(b)(1) and dismisses those claims.

#### 19 **Opportunity to Amend or Voluntarily Dismiss Complaint**

20 In general, leave to amend should be granted following dismissal of a  
21 complaint unless it is absolutely clear that amendment would be futile. *Gordon v.*  
22 *City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010); Fed. R. Civ. P. 15(a).  
23 However, as the Court stated in its prior Order, if Plaintiff chooses to amend his  
24 complaint and the Court finds the amended complaint is frivolous, malicious, or  
25 fails to state a claim, the amended complaint will be dismissed pursuant to 28  
26 U.S.C. §§ 1915A(b)(1) and 1915(e)(2). Such a dismissal would count as one of the  
27 dismissals under 28 U.S.C. § 1915(g).

1 As detailed above, the Court finds that Plaintiff's First Amended Complaint  
2 fails to state a claim against any named defendant. The Court previously gave  
3 Plaintiff notice of the deficiencies in his original complaint and he has failed to  
4 correct them; accordingly, the Court will not give Plaintiff leave to amend his  
5 claim a second time. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court  
6 cautions Plaintiff that this dismissal may count as one of his three "strikes" under  
7 28 U.S.C. § 1915(g) and may adversely his ability to bring claims in the future.  
8 Plaintiff is advised to read the statutory provisions under 28 U.S.C. § 1915.  
9 Accordingly, the Court dismisses the complaint pursuant to 28 U.S.C.  
10 §§ 1915A(b)(1) and 1915(e)(2).

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Plaintiff's First Amended Civil Rights Complaint Pursuant to 42 U.S.C. §  
13 1983 and/or *Bivens* Action and Motion for Injunctive Relief and Restraining Order  
14 to Prevent Irreparable Harm to *Peck v. Williams*, Case No. 2:17-cv-01620-JAD-  
15 VCE per 28 U.S.C. § 2254, ECF No. 37, is **DISMISSED with prejudice** for  
16 failure to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)  
17 and 1915A(b)(1).

18 2. Any outstanding motions are **DISMISSED as moot.**

19 **IT IS HEREBY ORDERED.** The District Court Clerk is hereby directed to  
20 enter this Order, enter judgment in Defendants' favor, forward a copy to Plaintiff,  
21 and **close** the file. The Court certifies any appeal of this dismissal would not be  
22 taken in good faith.

23 **DATED** this 27th day of February 2020.

24  
25 

26 Stanley A. Bastian  
27 United States District Judge  
28